

63
Sub 16. The plunger of Claim 11 wherein the head section is detachable from said head.

17. The plunger of Claim 11 wherein said handle is integral with said head.

REMARKS

This application is a continuation associated with prior application Serial No. 08/637,894 filed April 25, 1996.

It is believed that entry of the foregoing preliminary amendment will place the claims of this continuation application in condition for allowance. Specifically, Claims 1-4 and 6-12 have been amended and new Claims 13-17 have been added. In view of the foregoing amendments and the following argument for patentability, the applicant hereby respectfully requests entry of the amendment and allowance of the subject application.

In the prosecution of the prior application, Claims 1-3, 10 and 11 were rejected under 35 USC 103(a) as being unpatentable over Chieten, U.S. Patent No. 2,844,826, in view of Gross, U.S. Patent No. 3,021,532. The Examiner contends that Chieten discloses all of the elements of applicant's claimed invention with exception of the applicant's claimed sealing rings. However, the Examiner further contends that it would have been obvious to associate the rings of Gross' plunger's guide portion rings with the plunger of Chieten in order to facilitate drain engagement. The applicant respectfully traverses this contention of obviousness.

In order to deem the applicant's claimed invention unpatentable under 35 USC 103, a prima facie showing of obviousness must be made. To make a prima facie showing of obviousness, all of the claimed elements of an applicant's invention must be considered, especially when they are missing from the prior art. If a

claimed element is not taught in the prior art and has advantages not appreciated by the prior art, then no prima facie case of obviousness exists. The Federal Circuit court has stated that it was error not to distinguish claims over a combination of prior art references where a material limitation in the claimed system and its purpose was not taught therein (*In Re Fine*, 837 F.2d 107, 5 USPQ2d 1596 (Fed. Cir. 1988)).

The applicant's claimed invention includes three sealing rings of a shape, size, and location such that the claimed plunger will efficiently seal against a toilet or sink drain hole regardless of the size or shape of the hole, thereby providing a more effective suction and driving force for the plunger when it is operated to clear the drain hole. The claims 1-4 and 6-12 specify that the sealing means comprises an upper first ring-shaped seal (32), a bulbous annular curved second ring-shaped seal (36), depending from the first ring and a third bottom ring-shaped seal secured to the second seal, smaller in diameter than the second ring. Claim 7 further specifies that the second ring-shaped seal is of a substantially greater height than the first and second rings and of a continuously curved bulbous shape with its lower end of less diameter than its upper end. Claims 10-12 describe the seals as being ring-shaped, vertically spaced and of progressively smaller diameter from the uppermost ring to the lowermost ring.

Chieten teaches a toilet plunger that does not teach any seals, or sealing rings. The plunger of Cheiten does not and cannot perform the sealing functions of the present claimed plunger and is structurally and patentably distinct therefrom.

Gross teaches a plunger with a series of three small seals of equal dimensions disposed on the external surface of the force cup, the two lower seals being of equal diameter. The addition of the seals of Gross to the plunger of Chieten would not serve to render Claims 1-3, 10 and 11 unpatentable.

Gross does not teach the claimed sealing rings of different dimensions as discussed previously. Nor does Gross recognize the advantages of the applicant's

claimed invention, namely that the shape, size and location of the three sealing rings of the claimed plunger will efficiently seal against a toilet or sink drain hole regardless of the shape of the hole, thereby providing a more effective suction and driving force for the plunger when it is operated to clear the drain hole.

Thus, the applicants have claimed elements not taught in the cited art and which have advantages not recognized therein. Accordingly, no prima facie case of obviousness has been established in accordance with the holding of *In Re Fine*. This lack of prima facie showing of obviousness means that the rejected claims are patentable under 35 USC 103 over Cheiten and Gross. As such, it is respectfully requested that the rejection of Claims 1-3, 10 and 11 be reconsidered based on the following non-obvious claim language:

"A toilet and sink drain plunger comprising: ...a handle; ...a bellows secured to said handle; and, ...toilet and sink drain hole sealing rings integral with the lower end of said bellows, said sealing rings comprising, ...an upper annular first ring depending from the lowermost portion of said bellows cooperating therewith to form on the outer surface a first drain hole seal;...an annular second ring depending from said first ring, located relative to said first ring to form on its outer surface a second seal smaller than said first seal; and,...a third bottom ring secured to the underside of said second seal, smaller in diameter than said second seal, the outer surface of said bottom ring forming a third seal, said seals being integral with each other and said bellows and having a central opening therein communicating with said bellows space."

In prosecution of the prior application, Claims 1-4 and 10-12 were rejected as being obvious over Cheiten in view of Gross, in further view of Tash, U.S. Patent No. 4,745,641. It was contended in the Office Action that it was considered obvious

to add the pleated bellows to the plunger allegedly taught by the combination of Cheiten in view of Gross. The applicant respectfully traverses this contention of obviousness for the reasons specified in the discussion above of the rejection based on Cheiten in view of Gross.

Tash teaches a plunger having a pleated bellows. However, Tash does not teach the applicant's claimed three sealing rings.

Figure 5 of the drawings in the present application demonstrates how the two lower seal rings efficiently engage the surfaces defining the drain hole to be plunged by the present claimed plunger. This sealing engagement clearly would not be possible with the small uniform diameter sealing rings of Gross, if they were added to the Cheiten plunger. Moreover, although Tash does show a pleated bellows, it does not show the three sealing rings of the present claims, their size, shape and relative location. Accordingly, there is no disclosure, whatsoever which is structurally similar to the present claimed sealing rings. None of the cited references disclose plungers, which perform as does the present claimed plunger to efficiently seal a drain hole regardless of its particular contours. It should be noted that the plungers of the cited references are incapable of being used efficiently on both sink drain holes and toilet drain holes, particularly toilet drain holes of drastically different configurations, such as are shown in Figure 4 of the present drawings. Thus, the claimed sealing rings have advantages, which are not appreciated in the cited art.

The applicant has claimed elements not taught in the cited art, which have advantages not recognized therein. As a result, no prima facie case of obviousness has been established in accordance with the holding of *In Re Fine*. This lack of a prima facie showing of obviousness means that the rejected claims are patentable under 35 USC 103 over Cheiten in view of Gross, and in further view of Tash. It is, therefore, respectfully requested that the rejection of Claims 1-4 and 6-12 be reconsidered based on the above-quoted claim language.

In the prosecution of the previous application, Claims 6-9 were rejected under 35 U.S.C. 103(a) as being unpatentable over Chieten in view of Gross, Tash and Lacey, et al, U.S. Patent No. 3,336,604 (hereinafter Lacey). The applicant respectfully traverses this rejection based on the arguments stated above with respect to the other rejections. The vertical guide portion of Lacey has no effect on the patentability of the present claims. Neither Lacey, nor Cheiten discloses or infer the sealing rings of the present claims. If Cheiten were modified to provide a vertical guide portion and the rings of Gross were added thereto, such rings would be small and all the same diameter, in total contrast to the present claimed ring seals of the present claimed invention. Moreover, they could not provide the sealing efficiency of the present claimed rings for both toilet and sink drain holes of various configurations.

Accordingly, the applicants have claimed elements not taught in the cited art, which have advantages not recognized therein. As a result, no prima facie case of obviousness has been established in accordance with the holding of *In Re Fine*. This lack of a prima facie showing of obviousness means that the rejected claims are patentable under 35 USC 103 over Cheiten and Gross, in view of Tash, and in further view of Lacey. It is, therefore, respectfully requested that the rejection of Claims 1-4 and 6-12 be reconsidered based on the above-quoted claim language.

It is believed that the foregoing amendments have placed the claims in condition for allowance. Therefore, reconsideration of the rejection of Claims 1-4 and 6-12 is respectfully requested. In addition, allowance of these claims at an early date is courteously solicited.

In summary, it is respectfully requested that the foregoing amendments to the existing claims be entered to place them in condition for allowance. Additionally, it is respectfully requested that new Claims 13-17 be entered and examined. It is the applicant's position, based on the foregoing arguments, that all claims are

patentable under 35 USC 103 over the cited art. Accordingly, allowance of Claims 1-4 and 6-12, as well as new Claims 13-17, at an early date is courteously solicited.

Respectfully submitted,

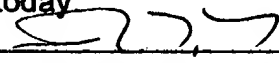


Richard T. Lyon
Registration No. 37,385
Attorney for Applicants

Lyon, Harr and DeFrank, LLP
300 Esplanade Drive, Suite 800
Oxnard, California 93030
(805) 278-8855

CERTIFICATE OF MAILING

I hereby certify that the attached correspondence is being placed in First Class Mail addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231 as of today

 date: MAY 3, 1999
Richard T. Lyon